



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,541	09/08/2003	Jeffrey T. LaBelle	9138-0092US	3256

28529 7590 04/05/2005

GALLAGHER & KENNEDY, P. A.
2575 E. CAMELBACK RD. #1100
PHOENIX, AZ 85016

EXAMINER

KOSSON, ROSANNE

ART UNIT	PAPER NUMBER
----------	--------------

1651

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/658,541

Applicant(s)

LABELLE ET AL.

Examiner

Rosanne Kosson

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27,28 and 31-46 is/are pending in the application.
- 4a) Of the above claim(s) 35-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 27,28,31-34 and 44-46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All. b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/14/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

The amendments filed on March 14, 2005 have been received and entered. The specification has been amended. Claim 27 has been amended, claims 1-26, 29 and 30 have been canceled, and claims 44-46 have been added. Accordingly, claims 27, 28, 31-34 and 44-46 are pending and are examined on the merits herewith.

The text of those sections of Title 35, U.S. code, not included in this action can be found in a prior office action.

Specification

The amendments to the specification filed on March 14, 2005 are objected to under 35 U.S.C. 132 because they introduce new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows. Applicants have amended their definitions of RC⁺ chlorosome and RC⁻ chlorosome. In the amendments, RC⁺ chlorosome is referred to as "RC⁺ whole cell fragment" or "whole cell fragment." The term "whole cell fragment" does not appear in the specification as filed. In the amendments, RC⁻ chlorosome is referred to as RC⁻ chlorosome or "chlorosome RC⁻" or "chlorosome RC⁻." The term "RC⁻ chlorosome" is clear from the original specification, but the term "chlorosome RC⁻" does not appear in the original specification. Although the term "chlorosome RC⁻" appears twice in the original specification, and the term "RC⁻ chlorosome" appears several times in the

Art Unit: 1651

original specification, it is confusing that both terms are used and that they appear in the amendments. It is not clear from the original specification why all three of these terms are used or needed to refer to the same composition. Applicants are requested to use one of these terms, preferably "RC⁻ chlorosome." Thus, the amendments to the specification that recite the terms "RC⁺ whole cell fragment," "whole cell fragment, " "chlorosome RC⁻" or "chlorosome RC⁻" must be canceled (see, e.g., the amendments to pp. 10-13).

Regarding the amendments to p. 14, first two full paragraphs, amending the description of Figure 9 to refer to RC⁻ chlorosomes, instead of chlorosomes, is new matter, particularly as the chromatogram of Figure 9 contains two features that refer to Bchl a, which is not present in RC⁻ chlorosomes. Applicants have amended the following paragraph to refer to the peaks of Fig. 6, instead of the peaks of Fig. 5. Firstly, this amendment is not supported by the original application. Secondly, both figures are illustrations of chlorosomes, not chromatograms, and do not contain peaks.

Regarding the amendments to the last paragraph of p. 15 and the first two paragraphs of p. 16, "RC⁺ chlorosomes" was amended to "RC⁺ fragments." This is new matter, as the original application does not provide support for "RC⁺ fragments." Although the following paragraph may be amended to recite "RC⁻ chlorosomes," it is not clear why they are referred to as "chlorosomes RC⁻."

Regarding the amendment to p. 19, 1st paragraph, the original application does not support amending "chlorosomes" to "RC⁻ chlorosomes," as this paragraph discusses

Art Unit: 1651

a different procedure that described in the preceding paragraphs. Consequently, this amendment is new matter.

Regarding the amendments on pp. 30, 31 and 41, amending, adding and deleting these paragraphs is new matter, as the original specification contains essential material related to enablement of Applicants' invention.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Objections

In view of Applicants' amendments to the claims, the objections to claims 3, 4 and 23 are withdrawn.

Claim 27 is objected to because of the following informality. In view of the discussion of the specification above, Applicants may wish to amend the phrases "chlorosomes RC⁻," "chlorosome fragments RC⁻" and "chlorosome RC⁻" to read "RC⁻ chlorosomes," "RC⁻ chlorosomes" and "RC⁻ chlorosome," respectively.

Claim Rejections - 35 USC § 112

In view of Applicants' amendments to the claims, the previous rejections of claims 1-34 under 35 USC § 112, first and second paragraphs, are withdrawn.

Claims 27, 28, 31-34 and 44-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 27 as amended recites

Art Unit: 1651

the limitation "the chlorosomes RC" in step (b). There is insufficient antecedent basis for this limitation in the claim. Applicants may wish to amend this phrase to read "RC chlorosomes."

Claim Rejections - 35 USC § 102

In view of Applicants' amendments to the claims, the rejections of claims 1-26, 33 and 34 as being anticipated by the prior art are withdrawn.

Claim Rejections - 35 USC § 103

In view of Applicants' amendments to the claims, the rejections of claims 1-26, 33 and 34 as being obvious over the prior art are withdrawn.

Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1651

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosanne Kosson whose telephone number is 571-272-2923. The examiner can normally be reached on Monday-Friday, 8:30-6:00, with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rosanne Kosson
Examiner
Art Unit 1651

rk
2005-03-31



ROBERT A. WAX
PRIMARY EXAMINER
Art Unit 1651